

"In an ordinary case, where no special burden of proof or explanation is by law cast upon the accused, his position is more favourable than it is in those cases where the law presumes something against him. The principle laid down in the recent English cases, particularly *Mancini v. Director of Public Prosecutions* ([1942] A.C. 1) appears to me to be that, where no special onus is cast by law upon the accused, then, if his story has the effect of raising a reasonable doubt as to the truth of the prosecution case, he is entitled to an acquittal."

I would therefore allow this appeal. The appellant is acquitted and discharged, and the order of endorsement of his driving licence is set aside.

Appeal allowed.

Solicitors: *Lovelace & Hastings.*

YEOH PANG KWAN v. WILLIAM JANZ

[A.C.J. (Wan Suleiman J.) August 27, 1971]

[Alor Star — Civil Appeal No. 6 of 1968]

Landlord and Tenant — Lease — Surrender of — Arrears of rent — Parol lease of less than one year — No provision as regards length of notice required to terminate — Application of common law principles — Reasonable notice — Land Enactment No. 56 (Kedah) s. 94 — Civil Law Ordinance, 1956, s. 3(1).

This was an appeal against the judgment of the sessions court which ordered the appellant to pay arrears of rent and to surrender the land occupied by him to the respondent. It appeared that no notice to quit had been given by the respondent.

Held: the tenancy in this case was a parol lease for a term not exceeding one year and a reasonable notice to quit would be a month's notice. As no such notice had been given, the tenancy had been unlawfully terminated and therefore the respondent was not entitled to an order for possession of the land.

Cases referred to:-

(1) *Harnam Singh v. Ho Seng* [1935] M.L.J. 15.

(2) *Simmons v. Crossley* [1922] 2 K.B. 95, 107.

CIVIL APPEAL.

Ooi Gin Sun for the appellant.

Respondent in person.

Wan Suleiman J.: The respondent/plaintiff at material times was the owner of a piece of land under Land Grant No. 19455 at Bakar Arang, Sungei Patani, and the appellant/defendant was the tenant on the land. According to the respondent this house was built by appellant's father in 1950 so that even if the respondent had claimed, which he had not, that this house was permanently attached to the land and therefore belongs to him, there is no question at all of the premises being controlled premises under the Control of Rent Ordinance, 1956.

According to the respondent the appellant had paid ground rent at \$10 per month for two months in 1966, and to support his claim he produced Exhibits P1^A and P1^B in the court below.

The appellant claimed at first that ground rent was \$3 monthly, but he eventually admitted paying the

A increased rent on two occasions though he did say that he had paid \$12 and not \$10 on each occasion. I think it will be safe to assume from this that the tenancy agreement had been amended in respect of rent by mutual consent.

B Though the respondent averred in his statement of claim that he had served the appellant with a notice to settle and deliver up vacant possession, whatever that may mean, it is clear from his testimony in the court below and his admission during the hearing of the appeal that he had not served upon the appellant a notice to quit.

C It appears to me that this tenancy is a parol lease for a term not exceeding one year of the sort contemplated by section 94 of the Land Enactment No. 56 of Kedah, the land law applicable to this action. No provision having been made either in the Enactment or by any other written law in force in Malaysia as regards the length of notice required to determine this lease, the common law of England would apply in accordance with section 3(1) of the Civil Law Ordinance, 1956.

D In *Woodfall's Landlord and Tenant*, 26th Ed. vol. 1 at paragraph 734 appears the following passage:- "A demise of houses or of rooms at a monthly or weekly rent affords a presumption of a monthly or weekly tenancy,"

E and further down the same paragraph — "The proper notice unless the parties agree otherwise is a month's or a week's notice, as the case may be, expiring at the end of the current period of the tenancy."

In my opinion the presumption would also apply where the tenancy is in respect of land only.

F In any event following Thomas C.J. in *Harnam Singh v. Ho Seng*,⁽¹⁾ wherein he cited with approval the judgment of Swift J. in *Simmons v. Crossley*,⁽²⁾ notice in the case of a monthly tenancy must be reasonable according to the facts of the case. Taking into account the circumstances surrounding this tenancy I would say that a month's notice is reasonable.

G Failure to give such notice therefore means that the tenancy had been unlawfully terminated. Therefore whilst I uphold the decision of the learned president as regards the order to pay arrears of rent, I set aside the order requiring appellant to surrender that part of the land occupied by him to respondent.

Order accordingly.

H Solicitors: *Ooi Gin Sun & Co.*

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